

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE COMMISSIONER OF LABOR AND INDUSTRY

In the Matter of Brad L. Janssen,
individually and d/b/a Janssen Services

**FINDINGS OF FACT,
CONCLUSIONS
AND RECOMMENDATION**

The above-entitled matter came on before Administrative Law Judge Kathleen D. Sheehy for hearing at 9:30 a.m. on October 30, 2007, at the Office of Administrative Hearings, 600 North Robert Street, St. Paul, MN 55101. The OAH record closed at the conclusion of the hearing.

Christopher M. Kaisershot, Assistant Attorney General, 1200 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2130, appeared on behalf of the Department of Labor and Industry (the Department).

Brad L. Janssen, d/b/a Janssen Services, 7685 174th Street, Carver, MN 55315 (Respondent), did not appear in person or by counsel.

STATEMENT OF ISSUES

The issue presented in this case is whether the Commissioner properly issued a Cease and Desist Order precluding the Respondent from engaging in the work of a residential building contractor because it appeared the Respondent had engaged in or was about to engage in the following acts or practices:

(1) Unlicensed residential building contractor or residential remodeler activities, in violation of Minn. Stat. §§ 326.84, subds. 1 and 1b, and 326.91, subd. 1(5) (2006); and

(2) Fraudulent, deceptive, or dishonest practices, in violation of Minn. Stat. § 326.91, subd. 1(2), and Minn. R. 2891.0040, subp. 1C and 1F (2005).

Based upon all of the files, records and proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Brad L. Janssen, d/b/a Janssen Services, held license No. 20187853 as a residential building contractor from August 26, 1999 to March 31, 2005. On the latter date, Respondent's license expired.

2. On May 11, 2007, a homeowner in Victoria, Minnesota, filed a building permit application for the construction of a screened porch and attached deck.^[1] The plans filed in support of the application did not include some necessary information, such as beam sizes, beam locations, or type of lumber to be used in the project.^[2]

3. On or about May 14, 2007, Thomas Gray, the Building Official for the City of Victoria, telephoned the homeowner to inquire about the missing information. The homeowner advised Gray that her contractor, Brad Janssen, was on vacation, and that she would obtain the information when he returned. Because the plans for this project involved work in two special skill areas (carpentry and masonry), any contractor performing this work must be licensed.^[3] Gray then asked the homeowner if the Respondent was a licensed contractor, and she said Respondent was licensed and that the Respondent's business card contained license number 21087853.^[4]

4. Gray subsequently determined that the Respondent's license had lapsed in 2005 and was no longer valid. He telephoned the homeowner to communicate this information and to advise her that the Respondent would not be allowed to complete the work. The homeowner stated that she had already made a partial payment to the Respondent, that various materials had been delivered to pour the footings, and that the landscaper was on site and could not begin work until the footings were poured. Gray then agreed to revise the application to seek a permit for the footings only, because construction of footings involves only one special skill area and does not require a license.^[5] On May 15, 2007, he approved a permit for footings only for the porch and deck.^[6]

5. On May 16, 2007, an inspector for the City of Victoria inspected and approved the finished footings.^[7] On the same date, Gray filed a complaint with the Department alleging the Respondent was misrepresenting his status as a licensed contractor.^[8] Gray later forwarded to the Department a copy of the Respondent's business card, which indicates the Respondent has license number 20187853.^[9]

6. On May 21, 2007, the Department wrote to the Respondent seeking information about the nature of his work.^[10] The Department received no response to this inquiry from the Respondent.

7. On August 28, 2007, the Commissioner issued a Cease and Desist Order that was sent to the Respondent by first-class mail at 7685 174th Street, Carver, Minnesota 55315. The Cease and Desist Order alleged that Respondent

had engaged in unlicensed residential building contractor work and had misrepresented his licensed status in the procurement of a contract. The Order required the Respondent to cease and desist from engaging in the work of a residential building contractor until he complied with statutory requirements, including licensure under Minn. Stat. § 326.84 (2006). The Order advised the Respondent of his right to request a hearing by filing a written request for hearing within 30 days, after which the Order would become permanent and would remain in effect until modified or vacated by the Commissioner.^[11]

8. The Commissioner did not receive a written request for hearing from the Respondent within the 30-day period. On October 19, 2007, the Respondent telephoned counsel for the Department asking why no hearing had been scheduled. Counsel for the Department advised Respondent that no request for hearing had been received.^[12] On October 24, 2007, the Respondent faxed a written request for hearing to counsel for the Department.^[13]

9. On October 24, 2007, the Commissioner sent by first class mail a copy of the Notice and Order for Hearing and Statement of Charges (Notice and Order for Hearing) to the Respondent at 7685 174th Street, Carver, Minnesota 55315.^[14]

10. The Notice and Order for Hearing scheduled a hearing in this matter at 9:30 a.m. on October 30, 2007, at the Office of Administrative Hearings, 600 North Robert Street, St. Paul, Minnesota.

11. The Notice and Order for Hearing specifically notified the Respondent that failure to appear at the hearing may result in a finding that Respondent is in default, that the Department's allegations may be accepted as true, and that the Commissioner may issue an order making permanent the cease and desist order.^[15]

12. The Respondent did not appear for the hearing, nor did Respondent contact the Administrative Law Judge prior to the hearing to seek a continuance or request any other relief.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner are authorized to consider the charges against Respondent under Minn. Stat. §§ 14.50, 326.91, and 326.92, subd. 3.

2. Whenever it appears that a person has engaged or is about to engage in an act or practice constituting a violation of a law, rule, or order related to the duties and responsibilities entrusted to the commissioner, the commissioner may issue and cause to be served upon the person an order

requiring the person to cease and desist from violations.^[16] The cease and desist order must state the reasons for the entry of the order, and a hearing must be held not later than ten days after the request for the hearing is received.^[17]

3. Respondent received due, proper and timely notice of the charges against him and of the time and place of the hearing. This matter is, therefore, properly before the Commissioner and the Administrative Law Judge.

4. The Department has complied with all relevant procedural legal requirements.

5. Residential building contractors performing work in two or more special skill areas must be licensed.^[18]

6. The Respondent engaged in unlicensed building contractor activities, in violation of Minn. Stat. § 326.84, subds. 1 and 1b (2006), when he agreed to construct a screened porch and deck for the homeowner in Victoria, Minnesota.

7. The Commissioner may take adverse action against a licensee or agent owner who engages in fraudulent, deceptive, or dishonest practices.^[19] Making a material misrepresentation or omission in the procurement of a building contract, and contracting or offering to contract while a license is inactive, are both fraudulent, deceptive, or dishonest practices.^[20]

8. The Respondent engaged in fraudulent, deceptive, or dishonest practices by misrepresenting his licensed status in the procurement of a building contract with the homeowner in Victoria, Minnesota, and by contracting or offering to contract while his license was inactive, in violation of Minn. Stat. § 326.91, subd. 1(2) (2006), and Minn. R. 2891.0040, subp. 1C and 1F (2005).

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED: that the Commissioner issue an Order making permanent the Cease and Desist Order issued to the Respondent.

Dated: November 8, 2007

s/Kathleen D. Sheehy

KATHLEEN D. SHEEHY
Administrative Law Judge

Reported: Digitally recorded (no transcript prepared)

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of Labor and Industry will make the final decision after reviewing the record and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendation. Parties should contact Steve Sviggum, Commissioner, Department of Labor and Industry, 443 Lafayette Road North, St. Paul, MN 55155, or call the Department at (651) 284-5005, to learn about the procedure for filing exceptions or presenting argument. Under Minn. Stat. § 45.027, subd. 5a(b), within 15 days after receiving the administrative law judge's report, the commissioner shall issue a further order vacating or making permanent the cease and desist order.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

^[1] Ex. 1.

^[2] Testimony of Thomas Gray.

^[3] Minn. Stat. § 326.83, subds. 15 & 19(b)-(c).

^[4] Test. of T. Gray; Ex. 6.

^[5] Ex. 1.

^[6] Ex. 3.

^[7] Ex. 4.

^[8] Ex. 2.

^[9] Exs. 5 & 6.

^[10] Ex. 7.

^[11] Ex. 8.

^[12] Notice and Order for Hearing at 2.

^[13] Ex. 9.

^[14] Affidavit of Service by U.S. Mail (Oct. 24, 2007).

^[15] Notice and Order for Hearing at 3.

^[16] Minn. Stat. § 45.027, subd. 5a(a).

^[17] *Id.* § 45.027, subd. 5a(b).

^[18] Minn. Stat. § 326.83, subd. 15; Minn. Stat. § 326.84, subds. 1 and 1b (2006).

^[19] Minn. Stat. § 326.91, subd. 1(2) (2006).

^[20] Minn. R. 2891.0040, subp. 1C & 1F (2005).